THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.20863 OF 2005

DISPOSED OF ON 11-11-2005

BETWEEN:

K.MADHAVA RAO AND OTHERS ..PETITIONERS

AND

STATE OF A.P., OTHERS ..RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.20863 OF 2005

O R D E R :

1. The petitioners who are three in number challenge the notification issued under section 4 of the Land Acquisition Act, 1894 (for short Act) in Form 2-A published in A.P. Gazette dated 23.8.2005 insofar as it relates to their lands comprising survey Nos.460, 461 and 462 in Uppal Bhagath Village, Uppal Mandal, R.R. District.

2. The case of the petitioners, in brief, is :

The 1st petitioner purchased Ac.0.30 guntas of land in S.No.460. He gifted it to 2nd petitioner who is his wife under a gift deed dated 15.3.2002. 3rd petitioner is the owner of Ac.0.17 guntas in S.No.460, Ac.2.12 guntas in S.No.461 and Ac.1.08 guntas in S.No.462 at Uppal Bhagath, Uppal Mandal, R.R. District. The land is being used for growing grass. Eucalyptus trees fence it. It is situated adjacent to Uppal main road which joins national highway No.9-Hyderabad to Vijayawada. Towards south of the petitioners land at a distance of 900 meters river moosi is located which runs from East to West. The Government issued notification for acquisition of land for public purpose viz. Moosi River Conservation and River Front Development at Uppal Bhagath, Uppal Mandal. Eight similar notifications have been issued for acquisition of Ac.833.27 guntas of land for the said purpose. The notification, according to the petitioners, is absolutely vague and it does not give minimum details to understand the purpose and file objections effectively. The notification does not speak of the availability of any plan of the lands proposed to be acquired for public purpose in the office of respondents for inspection so as to enable the affected parties like the petitioners to peruse the same and file their objections. The enquiries made by the petitioners reveal that there is no plan of action in support of the proposed public purpose. A publication made in Times of India daily newspaper dated 31.5.2005 indicates that beautification plan for river Moosi is ready by dividing into two zones i.e., a Garden Zone and Heritage Zone. It further reads that Garden zone will be developed on 1600 acres of area with gardens, land scapping, park with amusement facilities like roller coaster, art plaza, food courts, open auditoriums for cultural events and golf course. The news item further reads that heritage zone provides for protecting heritage buildings like High Court, Salar Jung Museum, City Library etc. The news item, the petitioners plead,

published in Times of India on 31.5.2005 is based on the information given by the Commissioner of Municpal Corporation of Hyderabad and others. The power of eminent domain of the State to acquire private lands can be invoked only to serve public purpose and the said power of eminent domain cannot be invoked for purpose other than public purpose. For better understanding of the grievance of the petitioners, I deem it appropriate to refer para 9 of the writ affidavit and it is thus:

" 9. I submit that in fairness the impugned notification ought to have specified in some detail the proposed public purpose, namely "Moosi River Conservation and River Front Development". I submit that the said words are absolutely vague indefinite and lack material particulars. I submit that the impugned notification is so vague that it is practically impossible for the affected parties to file their objections and also impossible for the officers to carry out various steps that are required to be carried out under Sec.4(2) of the Act. I submit that on account of vagueness of the impugned notification and non-availability of any development plan or scheme in support of the public purpose the petitioners are prejudicially affected and they are not in a position to submit their objections. I submit that right to submit objections by the affected party inheres a right in the affected party to know the adverse material against it so that such affected party can submit its objections. If such adverse material is not available the affected party will be greatly prejudiced like in the present case in the submission of their objections. The petitioners are greatly prejudiced in exercising their right to submit objections. In the circumstances there is a clear violation of the principles of natural justice also."

3. Respondents filed counter affidavit. One S.P.Singh has sworn to the counter affidavit. It is stated in the counter affidavit that river Moosi was the life line of Hyderabad and it has become so badly polluted due to increase of population of Hyderabad, release of industrial effluents and untreated sewer, unfit for any human activity. Hence the State Government conceived various projects including Nandanavanam but the said project did not materialize. However, a comprehensive scheme is now conceived with the coordination of all the departments concerned and for the said purpose the State government has constituted a departmental committee vide G.O.Ms.No.330, dated 23.4.2005. The said committee looked into all aspects and recast the entire strategies in consultation with the School of Planning and Architecture, JNTU, Hyderabad which has undertaken comprehensive work on

river Moosi including technical and hyper technical study pertaining to it. 4th respondent has presented modalities of the project. Key issues identified are - pollution, encroachments, inaccessibility, incompatible land uses, heritage and natural vistas and under utilization of open spaces. It was emphasized that the highest flood level between the existing river bed and bank should be the critical design parameter. The projected project is categorized into 6 components namely – Environmental upgradation of the river, road infrastructure, heritage conservation, rehabilitation, administrative actions and design development and growth corridors. After discussions and deliberations, various decisions were taken. The Hyderabad Metropolitan Water Works and Sewerage Board should complete the first phase of sewerage project within 15 months time and the entire project should be completed within 30 months. The HUDA is an agency for implementing ecological and metropolitan precinct. The MCH will be the agency to implement heritage precinct. The river front development zone would be constituted with special regulation for the development of properties. All the implementing agencies would be constituted as Special Purpose Vehicle (SPV), which can help in mobilizing resources and coordinating activities. HUDA is required to complete the land acquisition work in coordination with the Collector of Hyderabad and Ranga Reddy Districts within 45 days. Accordingly action plan for Phases I and II were approved. The land proposed to be acquired under the impugned notification is marshy (slushy) land and the said land is not fit for agricultural activity and presently the said land is being used for raising grass. The land is surrounded by Moosi River on one side and nala on the other side which form as natural barrier from the main land. Though the petitioners contend that their land is 900 meters away from Musi River, but it is clear that the said land forms part of marshy land, and forms part of entire project. It is always open to the petitioners to participate in the enquiry to be conducted under section 5-A of the Act and put forth their objections. The entire project to be implementation involves saving river Moosi and restoring the same to its original glory.

4. The petitioners filed reply affidavit. It is suffice to refer para 21 of the reply affidavit and it is thus:

" 21. With reference to the allegations contained in paragraph 6 of the counter affidavit I deny the same and the 1st respondent is put to

strict proof of the same. I submit that the impugned notification does not denote the alleged public purpose in acquiring the lands in question. I submit that even though originally petitioners made certain allegations in the affidavit based on a report published in a newspaper, the said allegations stand proved by the counter affidavit and the material papers failed by the 1st respondent. I submit that several commercial activities mentioned have nothing to do with the saving of musi river nor the alleged restoration of the non –existent glory of the said river. I submit that incidental development can never constitute the public purpose within the meaning of Land Acquisition Act. It is absolutely incorrect to state that the petitioners made selective allegations ignoring the alleged predominant objects etc. I submit that it is absolutely incorrect that the proposed project includes various components with an aim to protect the environment in the surroundings of the musi river. I submit that the entire exercise is a camouflage for scale commercial activity."

5. Heard K.G.Kannabiran, learned senior counsel appearing for the petitioners and learned Special Government Pleader appearing for the respondents.

6. Learned senior counsel submits that notification under Sec.4 of the Act dated 23.8.2005 is very vague and thereby the petitioners are prejudiced to put their objections effectively. He further submits that the public purpose mentioned in the said notification is only a cause to acquire the property predominantly for commercial purpose which cannot be categorized as public purpose. He made specific references to para 4 and 6 of the writ affidavit in elaborating the grounds of challenge to the notification impugned in the writ petition. It is also submitted by him that the land of the petitioners is situated at a distance of 900 meters away from river moosi and therefore the same is not required for the alleged public purpose. His further submission has been that the notification is intelligibly drafted and it does not give the correct particulars so as to enable the petitioners to put in their objections effectively. In support of his submissions, reliance has been placed on the decisions of Supreme Court in AFLATOON V. LT. GOVERNOR OF DELHI, MADHYA PRADESH HOUSING BOARD V. MOHD. SHAFI and HINDUSTAN PETROLEUM CORPORATION LTD. V. DARIUS SHAPUR CHENAI.

7. In the first cited decision it has been held that the question whether the purpose specified in the notification u/s 4 of the Act is sufficient to enable an objection to be filed u/s 5A would depend upon the facts and circumstances of each case. In a case of acquisition of large area of land comprising several plots belonging to several persons, the specification of the purpose can only be with reference to the acquisition of the whole area. The learned senior counsel made emphasis on para 5 of the judgment which reads as under:

> "" **(5)** SECTION 4 of the Act says that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. According to the section, therefore, it is only necessary to state in the notification that the land is needed for a public purpose. The wording of Section 5A would make it further clear that all that is necessary to be specified in a notification under S.4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection under S.5A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under S.5A. This Court has laid down that it is necessary to specify the particular public purpose in the notification for which the land is needed or likely to be needed as, otherwise, the matters specified in sub-section (2) of Section 4 cannot be carried out.
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> "IT is apparent from sub-section (2) of S.4 that the public purpose which has to be stated in sub-sec. (1) of Section 4 has to be particularised because, unless that is done, the various matters which were mentioned in sub-section (2) cannot be carried out and if the possible purpose stated in Section 4 (1) is planned development, without anything more, it is extremely difficult to comprehend how all the matters set out in sub-section (2) can be carried out by the officer concerned."""

In the second cited decision, the Supreme Court held that the process of acquisition has to start with a notification issued under S. 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under S. 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which

is aimed at depriving a man of his property issued under S. 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts. The object of issuing a notification under S. 4 of the Act is twofold. First, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified there in, is needed or is likely to be needed by the government for the "public purpose" mentioned there in; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be, to do all such acts as are mentioned in S. 4(2) of the Act. It is further held that the public purpose which has been mentioned in the schedule of notification as residential is hopelessly vague and rendering the notification as invalid in law. In the third cited decision, the Supreme Court held that the conclusiveness contained in Sec.6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4,5 and 6 of the Act must be read conjointly. The Court in a case where there has been total non-compliance or substantial non-compliance of the provisions of Section 5-A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner Sec.6(3) of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can be exercised by the Court in the event the order impugned suffers from well known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

8. Learned Special Government Pleader appearing for the respondents submits that the project has been prepared after due deliberations and in consultation with School of Planning and Architecture, JNTU, Hyderabad which has undertaken comprehensive work on river moosi including technical and hyper technical study pertaining to it. He also submits that the purpose indicated in Sec.4(1) notification is very clear and there is no ambiguity and therefore the writ petition is liable to be dismissed. He also submits that the river conservation and development is extending between the nala and the banks of river moosi. He placed on record the plan to show that the lands proposed to be acquired are falling between nala and banks of river moosi. He also placed on record the action plan and minutes of

various meetings chaired by ministers concerned and participated by the heads of departments concerned.

9. From the scheme of the Act it is amply clear that in arriving at the satisfaction as to whether private property must be compulsorily acquired for a public purpose, there must be afixity of purpose in the mind of the Government, because it is in relation to that purpose that the government explores and arrives at its satisfaction. Prima facie, the Government is the best judge as to whether an acquisition is for a public purpose. But it is not the sole judge. Courts have the jurisdiction and it is their duty to determine whenever a question is raised whether an acquisition is or is not for a public purpose. In so determining, Courts have to proceed on the basis of the purpose declared under Section 4 and try to find out if the declared purpose is a public purpose at all. In finding out whether the purpose is really a public purpose, the Court has to apply two tests. Firstly whether the purpose benefits the community at large or a section thereof and, secondly whether the government is satisfied about the need of the land acquisition for the declared purpose. The public purpose need not be expressly stated in the notification or declaration but if the purpose be challenged, before a Court of Law, as not a public purpose, the same has to be established by evidence aliunde. But when the purpose is expressly stated in the notification or the declaration and that is challenged as not a public purpose, it does not become permissible to add to that purpose other purpose or purposes, not notified or declared, and try to support the land acquisition both on the notified and declared purpose and also on the unnotified and undeclared purpose.

10. Learned senor counsel appearing for the petitioners laid much stress on the point that notification under Section 4(1) of the Act is unintelligible and vague and thereby the petitioners are prejudiced in making objections effectively.

11. The provisions of the Act to the extent they are relevant, are reproduced hereunder:

> " Section 4. Publication of preliminary notification and powers of officers thereupon: (1) Whenever it appears to the (appropriate Government) that land in and locality (is needed or) is likely to be needed for any public purpose (or for a company) a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language) and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notices, being hereinafter referred to as the date of the publication of the notification).
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> 2. Thereupon it shall be lawful for any officer, either generally or

specially authorized by such Government in this behalf, and for this servants and workman,--

to enter upon and survey and take levels of any land in such locality;

to dig or bore in the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any proposed to be made thereon);

to make such levels, boundaries and line by placing marks and cutting trenches, and where otherwise the survey cannot be completed and the levels taken and the boundaries and lines marked, to cut down and clear away any part of the standing crop, fence of jungle;

Provided that no person shall enter into any building or upon any other enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previous giving such occupier at least seven days, notice in writing of his intention to do so."

" Section 5A- Hearing of objections – (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section 91), or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decisions of that Government. The decision of the Appropriate Government on the objections shall be final.

3. For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

12. An extent of about Ac.833.27 guntas is proposed to be acquired under various notifications of even date 23.08.2005. It is suffice to refer one of such notifications and it is thus:

" ***FORM 2-A***

DRAFT NOTIFICATION UNDER SECTION 4 OF THE LAND ACQUISITION ACT I OF 1894 AS AMENDED BY ACT XXXVIII OF 1923.

Whereas it appears to the Government of Andhra Pradesh that the land specified in the schedule below are situated in the Uppal Bhagath (V), Uppal

(M), Ranga Reddy District is needed for Public Purpose to wit for Musi River Conservation & River Front Development at Uppal Bhagath, Uppal Mandal. Notice to this effect is hereby given to all whom it may concern in accordance with the provisions of Section 4(1) of the Land Acquisition Act 1 of 1894 as amended by the L.A. Amendment Act XXXVIII of 1923 and the governor of Andhra Pradesh hereby authorizes the Land Acquisition Officer, Hyderabad Urban Development Authority his staff and workmen to exercise the powers conferred by Section 4(2) of the L.A. Act.

Under Clause © of Section (3) of Land Acquisition Act the Governor of Andhra Pradesh appoints the Land Acquisition Officer, HUDA, Hyderabad to perform the functions of the Collector under Section 5-A of the said Act."

13. On a plain reading of the notification, can it be said that there is any ambiguity with regard to the purpose for which acquisition of land was sought for. To my mind, it is very clear that the purpose of the proposed acquisition is for Musi River Conservation and River Front Development at Uppal Bhagath, Uppal Mandal, Ranga Reddy District. This project has been conceived by the Government not by overnight. But, it is after due deliberations with the Departments concerned. Material has been placed before me to show that meetings were held before conceiving the project and assistance was taken from the School of Planning and Architecture, J.N.T.U., Hyderabad, in preparing the scheme. The purpose of proposed acquisition is very clear and there is no ambiguity. Therefore, the contention of the learned Senior Counsel has no merit.

14. The next submission made by the learned senior counsel appearing for the petitioners is that property of a private individual cannot be acquired for the benefit of entrepreneurs for establishing their business establishments. The arguments appears, prima facie to be sound, but on close scrutiny of the material papers placed before me, I do not detain myself long to reject the said contention. The action plan has been placed before me. It is in two phases. In the first phase, the details of works are:

1. Construction of intercepting sewers.
2. Landscape and recreation.
3. Imlibun Island Environmental upgradation.
4. Check Dams.
5. Intercepting sewers.
6. Landscape and recreation.
7. Open spaces revitalization.

8. River Drives and Junction Improvements.
9. Access Roads improvements.
10. Parking facilities.
11. River drives and junction improvements.
12. Access roads improvements.
13. Parking facilities.
14. Restoration of bridges and buildings/structures.
15. Heritage and tourism facilities.
16. Restoration of bridges and buildings/structures.
17. Heritage and tourism facilities.
18. Relocation of existing river bed activities.
19. Acquisition of river bed land.
20. Rationalisation of graveyards and burning ghats.
21. Rationalisation of religious structures.
22. Rehabilitation of Dhobi ghats.
23. Restoration of Ethnic Markets.
24. Ganesh Immersion ghat.
25. Upstream Development.
26. Creation of SPV.
27. Delineation of riverfront development zone.
28. Regulation of river front development and Asset Management Planning and Schematic strategy for up and down streams.

In the second phase, the details of works are:

13. Intercepting sewers.
14. STPs.
15. Landscape and recreation.
16. Revitalisation of existing open spaces.
17. Construction of check dams.
18. River Drives and Junction Improvements.

19. Access Roads improvements.

20. Parking facilities.

21. Nature trails.

22. Acquisition of river bed land.

23. Informal Commercial Activities.

24. Property Development.

25. Nagole growth corridor.

Therefore, it cannot be said that this land proposed to be acquired is only for the benefit of entrepreneurs. Hence, I find that the writ petition is devoid of merits and the same is liable to be dismissed.

15. Accordingly, the writ petition is dismissed. No costs.

Dt:11.11.2005. (B.Seshasayana Reddy, J)

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